



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

October 19, 1994

REPLY TO THE ATTENTION OF:

The Honorable Jon G. Lotis
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900
401 M Street, S.W.
Washington, D.C. 20460

Re: Marion Steel Company (The), Marion, Ohio.
Docket No. TSCA-V-C-87-93.

Dear Judge Lotis:

Enclosed please find Complainant's Motion for Accelerated Decision, and Complainant's Memorandum in Support of its Motion for Accelerated Decision, for this civil administrative action.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Trevino", written over a horizontal line.

Jeffery M. Trevino
Assistant Regional Counsel

Enclosures

cc: Stephen P. Samuels
Counsel for Respondent

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US ENVIRONMENTAL
PROTECTION AGENCY
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR


In the Matter of) Docket No. TSCA-V-C-87-93.
Marion Steel Company (The)) Judge Lotis
Respondent)

COMPLAINANT'S MOTION
FOR ACCELERATED DECISION

Complainant, the Acting Director, Environmental Sciences Division, Region 5, U.S. Environmental Protection Agency, ("U.S. EPA"), by and through her attorney, Jeffery M. Trevino, Assistant Regional Counsel, hereby moves for an accelerated decision, pursuant to 40 C.F.R. § 22.16, finding Respondent, Marion Steel Company, Marion, Ohio, liable for violating 40 C.F.R. Part 761, and Section 15 of the Toxic Substances Control Act, 15 U.S.C. § 2614, pursuant to 40 C.F.R. § 22.20.

Complainant has attached to this Motion its Memorandum In Support of its Motion for Accelerated Decision.

Respectfully submitted,



Jeffery M. Trevino
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U.S. Environmental Protection
Agency
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US ENVIRONMENTAL
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ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of) Docket No. TSCA-V-C-87-93.
)
Marion Steel Company (The)) Judge Lotis
)
Respondent)

MEMORANDUM IN SUPPORT OF COMPLAINANT'S
MOTION FOR ACCELERATED DECISION

The Complainant, the Acting Director, Environmental Sciences Division, Region 5, U.S. Environmental Protection Agency, ("U.S. EPA"), by and through her attorney Jeffery M. Trevino, Assistant Regional Counsel, hereby submits its Memorandum in Support of its Motion for Accelerated Decision, pursuant to 40 C.F.R. § 22.16.

I. BACKGROUND

The Respondent, Marion Steel Company, 912 Cheney Avenue, Marion, Ohio, is a steel mill. Its operations have included and continue to include the use of PCB Transformers.

On November 30, 1992, and December 1, 1992, Charlotte E. Hammar, Environmental Specialist I, and Thomas P. Buchan, Environmental Specialist II, of the Ohio Environmental Protection Agency, ("OEPA"), inspected the steel mill to determine its compliance with the Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, 40 C.F.R. Part 761, and the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 et seq.

On September 24, 1993, the Complainant filed a Complaint against the Respondent alleging in six (6) counts that the Respondent: failed to develop and maintain annual records and the written annual document logs on the disposition of PCBs and PCB items for 1991, 1990, 1989, 1988, 1987, 1986, 1985, 1984, and 1983; stored combustible materials within five (5) meters of a PCB Transformer; and, failed to notify the EPA of its PCB waste handling activities prior to engaging in PCB waste handling activities. On October 13, 1993, the Respondent filed its Answer to the Complaint. On January 5, 1994, the parties discussed the Complaint in an informal settlement conference. However, the parties have been unable to resolve this action. On June 17, 1994, the parties filed Prehearing Exchanges. On August 29, 1994, the Complainant moved to amend Count VI of its Complaint to allege that the Respondent had previously notified EPA or a State of its hazardous waste activities under RCRA, but failed to notify EPA of its PCB waste activities by filing EPA form 7710-53 with EPA by April 4, 1990. On September 27, 1994, the Court granted the Complainant's Motion to Amend the Complaint. On October 11, 1994, the Respondent filed its Answer to the Amended Complaint.

II. ARGUMENT

A. STANDARD FOR ACCELERATION DECISION

The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor

of the complainant or respondent as to all or any part of a proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the proceeding. 40 C.F.R. § 22.20(a).

No genuine issue of material fact exists with regard to the Respondent's liability and the Complainant is entitled to such judgment as a matter of law pursuant to 40 C.F.R. § 22.20.

B. STATUTORY PROVISIONS

It is unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605. 15 U.S.C. § 2614(1)(C).

The first element required to demonstrate a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), is that the Respondent is a "person" pursuant to 40 C.F.R. § 761.3. The Amended Complaint alleges that the Respondent is a "person" pursuant to 40 C.F.R. § 761.3. (Amended Complaint ¶ 5). The Respondent admits that it is a "person" pursuant 40 C.F.R. § 761.3. (Answer ¶ 5).

The second element required to demonstrate a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), is that the Respondent failed to comply with a rule promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605. The Amended Complaint alleges in six (6) counts that the Respondent failed to comply with the PCB regulations codified at 40 C.F.R. Part 761, which

were promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605. (Amended Complaint ¶¶ 17, 21, 25, 29, 33, 40). The Respondent denies these allegations of the Complaint. (Answer ¶¶ 17, 21, 25, 29, 33, 40).

However, the pleadings and evidence demonstrate that no genuine issue of material fact exists with regard to Respondent's liability and the Complainant is entitled to such judgment as a matter of law pursuant to 40 C.F.R. § 22.20.

B. REGULATORY PROVISIONS

1. Each owner or operator of a facility using at any one time one or more PCB transformers is required to develop and maintain at the facility all annual records and the written annual document log of the disposition of PCBs and PCB items. 40 C.F.R. § 761.180(a).

2. Combustible materials must not be stored within five meters of a PCB Transformer. 40 C.F.R. § 761.30(a)(1)(viii).

3. Generators of PCB waste who have previously notified EPA or a State of hazardous waste activities under RCRA shall notify EPA of their PCB waste activities under the PCB rule by filing EPA form 7710-53 with EPA by April 4, 1990. 40 C.F.R. § 760.205(a)(2).

C. REGULATORY VIOLATIONS

The pleadings and evidence demonstrate Respondent's six separate and independent violations of 40 C.F.R. §§ 761.180(a), 761.30(a)(1)(viii), and 761.205(b), and Section 15 of TSCA, 15 U.S.C. § 2614.

1. The Respondent failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1991, in violation of 40 C.F.R. § 761.180(a).
 - a. The Respondent used six PCB Transformers at its facility during 1991.

The Respondent used six PCB Transformers at its facility in 1991. (Exhibit #1).

- b. The Respondent failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1991.

Count I of the Amended Complaint alleges that on November 30, 1992, the Respondent had failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1991. (Amended Complaint ¶ 16). The Respondent denies the allegation. (Answer ¶ 16).

However, the affidavits of Ms. Hammer and Mr. Buchan demonstrate that on November 30, 1992, they asked the Respondent for annual records and the written annual document log of the disposition of PCBs and PCB items for 1991, and the Respondent failed to provide annual records and the written annual document log of the disposition of PCBs and PCB items for 1991. (Exhibits #2 and #3).

Therefore, there is no genuine issue of material fact with regard to the Respondent's liability for Count I of the Amended Complaint and the Complainant is entitled to such judgment as a matter of law pursuant to 40 C.F.R. § 22.20.

2. The Respondent failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1990, in violation of 40 C.F.R. § 761.180(a).

- a. The Respondent used six PCB Transformers at its facility during 1990.

The Respondent used six PCB Transformers at its facility in 1990. (Exhibit #1).

- b. The Respondent failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1990.

Count II of the Amended Complaint alleges that on November 30, 1992, the Respondent had failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1990. (Amended Complaint ¶ 20). Respondent denies the allegation. (Answer ¶ 20).

However, the affidavits of Ms. Hammer and Mr. Buchan demonstrate that on November 30, 1992, they asked the Respondent for annual records and the written annual document log of the disposition of PCBs and PCB items for 1990, and the Respondent failed to provide annual records and the written annual document log of the disposition of PCBs and PCB items for 1990. (Exhibits #2 and #3).

Therefore, there is no genuine issue of material fact with regard to the Respondent's liability for Count II of the Amended Complaint and the Complainant is entitled to such judgment as a matter of law pursuant to 40 C.F.R. § 22.20.

3. The Respondent failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items, for 1989, in violation of 40 C.F.R. § 761.180(a).

a. The Respondent used six PCB Transformers at its facility during 1989.

The Respondent used six PCB Transformers at its facility in 1989. (Exhibit #1).

b. The Respondent failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1989.

Count III of the Amended Complaint alleges that on November 30, 1992, the Respondent had failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1989. (Amended Complaint ¶ 24). Respondent denies the allegation. (Answer ¶ 24).

However, the affidavits of Ms. Hammer and Mr. Buchan demonstrate that on November 30, 1992, they asked the Respondent for annual records and the written annual document log of the disposition of PCBs and PCB items for 1989, and the Respondent failed to provide annual records and the written annual document log of the disposition of PCBs and PCB items for 1989. (Exhibits #2 and #3).

Therefore, there is no genuine issue of material fact with regard to the Respondent's liability for Count III of the Amended Complaint and the Complainant is entitled to such judgment as a matter of law pursuant to 40 C.F.R. § 22.20.

4. The Respondent failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items, for 1988, 1987, 1986, 1985, 1984, and 1983, in violation of 40 C.F.R. § 761.180(a).

- a. The Respondent used six PCB Transformers at its facility during 1988, 1987, 1986, 1985, 1984, and 1983.

The Respondent used six PCB Transformers at its facility during 1988, 1987, 1986, 1985, 1984, and 1983. (Exhibit #1).

- b. The Respondent failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1988, 1987, 1986, 1985, 1984, and 1983.

Count IV of the Amended Complaint alleges that on November 30, 1992, the Respondent had failed to develop and maintain annual records and the written annual document log of the disposition of PCBs and PCB items for 1988, 1987, 1986, 1985, 1984, and 1983. (Amended Complaint ¶ 28). Respondent denies the allegation. (Answer ¶ 28).

However, the affidavits of Ms. Hammer and Mr. Buchan demonstrate that on November 30, 1992, they asked the Respondent for annual records and the written annual document log of the disposition of PCBs and PCB items for 1988, 1987, 1986, 1985, 1984, and 1983, and the Respondent failed to provide annual records and the written annual document log of the disposition of PCBs and PCB items for 1988, 1987, 1986, 1985, 1984, and 1983. (Exhibits #2 and #3).

Therefore, there is no genuine issue of material fact with regard to the Respondent's liability for Count IV of the Amended

Complaint and the Complainant is entitled to such judgment as a matter of law pursuant to 40 C.F.R. § 22.20.

5. On November 30, 1992, the Respondent stored combustible materials within five meters of an unenclosed PCB Transformer, in violation of 40 C.F.R. § 761.30(a)(1)(viii).

- a. The Respondent used six PCB Transformers at its facility during 1992.

Count V of the Amended Complaint alleges that on November 30, 1992, the Respondent was using six PCB Transformers at its facility. (Amended Complaint ¶¶ 9, 10). The Respondent admits the allegations. (Answer ¶¶ 9, 10).

- b. On November 30, 1992, the Respondent stored combustible materials within five meters of an unenclosed PCB Transformer.

Count V of the Amended Complaint alleges that on November 30, 1992, the Respondent stored a combustible material within five meters of an unenclosed PCB Transformer. (Amended Complaint ¶ 32). Respondent denies the allegation. (Answer ¶ 32).

However, the affidavits of Ms. Hammer and Mr. Buchan demonstrate that on November 30, 1992, they found that the Respondent was storing a combustible material within five meters of an unenclosed PCB Transformer. (Exhibits #2 and #3).

Therefore, there is no genuine issue of material fact with regard to the Respondent's liability for Count V of the Amended Complaint and the Complainant is entitled to such judgment as a matter of law pursuant to 40 C.F.R. § 22.20.

6. The Respondent Is A "Generator of PCB Waste" Which Had Previously Notified EPA or a State of Hazardous Waste Activities Under RCRA, but Which Failed to Notify EPA of Their PCB Waste Activities Under This Part by Filing U.S. EPA Form 7710-53 with EPA by April 4, 1990.

- a. The Respondent is a "generator of PCB waste" as that term is defined at 40 C.F.R. § 761.3.

Count VI of the Amended Complaint alleges that the Respondent is a "generator of PCB waste" as that term is defined at 40 C.F.R. § 761.3. (Amended Complaint ¶ 7). The Respondent admits the allegation. (Answer ¶ 7).

- b. The Respondent had previously notified EPA or a State of hazardous waste activities under RCRA.

Count VI of the Amended Complaint alleges that the Respondent had previously notified the State of Ohio of its hazardous waste activities under RCRA. (Amended Complaint ¶ 36). The Respondent admits the allegation. (Answer ¶ 36).

- c. The Respondent conducted PCB waste handling activities from January 31, 1991, to April 4, 1991.

Count VI of the Original Complaint alleged that the Respondent stored PCB capacitors and debris for disposal from January 31, 1991, through April 4, 1991. (Original Complaint ¶ 36). The Respondent admitted the allegation. (Original Answer ¶ 36). Count VI of the Original Complaint alleged that the Respondent's storage of PCB capacitors and debris for disposal constitutes PCB waste handling activities. (Original Complaint ¶ 37). The Respondent admitted the allegation. (Original Answer ¶ 37).

- d. The Respondent owned and operated PCB storage facilities during 1983, 1984, 1985, 1986, 1987, 1988, 1990, and 1991, which were subject to the storage requirements of 40 C.F.R. § 761.65(b) or (c) (7).

Count VI of the Amended Complaint alleges that the Respondent owned and operated PCB storage facilities during 1983, 1984, 1985, 1986, 1987, 1988, 1990, and 1991, which were subject to the storage requirements of 40 C.F.R. § 761.65(b) or (c) (7). (Amended Complaint ¶ 38). The Respondent failed to admit, deny, or explain the allegation, as required by 40 C.F.R. § 22.25(b). Therefore, Respondent admits the allegation, pursuant to 40 C.F.R. § 22.15(d).

- e. The Respondent failed to notify EPA of its PCB waste handling activities under this part by filing EPA form 7710-53 with EPA by April 4, 1990.

Count VI of the Amended Complaint alleges that the Respondent failed to notify EPA of its PCB waste handling activities under this part by filing EPA form 7710-53 with EPA by April 4, 1990. (Amended Complaint ¶ 39). The Respondent admits the allegation. (Answer ¶ 38).

Therefore, there is no genuine issue of material fact with regard to the Respondent's liability for Count VI of the Amended Complaint and the Complainant is entitled to such judgment as a matter of law pursuant to 40 C.F.R. § 22.20.

D. STATUTORY LIABILITY

The Respondent is a person who has violated the regulations at 40 C.F.R. Part 761, and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

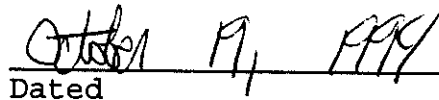
III. CONCLUSION

WHEREFORE, Complainant respectfully requests that this Court grant it an accelerated decision finding Respondent liable for its six separate and independent violations of 40 C.F.R. Part 761, and Section 15 of TSCA, 15 U.S.C. § 2614, pursuant to 40 C.F.R. § 22.20.

Respectfully submitted,



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Dated

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)	Docket No. TSCA-V-C-87-93.
)	Judge Lotis
Marion Steel Company (The))	
)	
Respondent)	

CERTIFICATE OF SERVICE

I hereby certify that today I personally delivered to Marie A. Hook, Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 10th Floor, 77 West Jackson Boulevard (MF-10J), Chicago, Illinois 60604-3590, the original documents entitled COMPLAINANT'S MOTION FOR ACCELERATED DECISION and COMPLAINANT'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR ACCELERATED DECISION, and that I issued to the Court and to the Respondent by U.S. Mail a copy of the original documents:

The Honorable Jon G. Lotis
Office of Administrative Law Judges
U.S. Environmental Protection Agency
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Washington, D.C. 20460;

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October 19, 1998
Dated

Jeffery M. Trevino
Jeffery M. Trevino
Assistant Regional Counsel.